

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 926 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Environmental Accessibility Adaptation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for environmental accessibility adaptation ("EAA") services provided by qualified building professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules on August 22, 2003 (50 DCR 6989) by defining clear limits on EAA service. The previous lifetime limit of \$10,000 per participant for EAA changed to a limit of \$10,000 in expenditures on EAA services over a five-year period per participant and to no more than two residences in the five-year period.

The District of Columbia Medicaid Program is also modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services have also approved the corresponding Waiver with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 7, 2007 (54 DCR 011730). No comments on the proposed rulemaking were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 926 (Environmental Accessibility Adaptation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

926 ENVIRONMENTAL ACCESSIBILITY ADAPTATION SERVICES

- 926.1 Environmental accessibility adaptation (EAA) services shall be reimbursed by the District of Columbia Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 926.2 EAA services are physical adaptations to a home, required by a person's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care that are

necessary to ensure the health, welfare, and safety of a person, or that enable a person to live with greater independence in the home, and without which the person would require institutionalization. EAA services shall be intended to cover the difference between construction or renovation costs to make the home accessible and not to cover basic construction or renovation costs. For example, EAA services shall be intended to cover the costs associated with construction or renovation work under subsections 926.3(a)(b)(d) and (e), but may not cover all of the costs associated with construction or renovation work under subsection 926.3(c).

926.3 EAA services may include:

- (a) Installing ramps and grab-bars;
- (b) Widening doorways;
- (c) Modifying bathroom facilities;
- (d) Installing lift systems; and
- (e) Installing specialized electric and plumbing systems that are necessary to accommodate medical equipment and supplies.

926.4 EAA services shall:

- (a) Be necessary to ensure the health, welfare, or safety of the person and enable the person to function with greater independence; and
- (b) Not be provided or reimbursed for persons eligible for the Department of Housing and Community Development, Handicap Accessibility Improvement Program.

926.5 To be eligible for reimbursement, EAA services shall be:

- (a) Pre-authorized by the Department on Disability Services (DDS);
- (b) Installed in one of the following:
 - (1) The person's own home;
 - (2) The home of the person's family, guardian, or other primary caretaker who is not providing Residential Habilitation Services under the Waiver;
 - (3) A foster home in which the person resides;
 - (4) An apartment or other rental property in which the person resides, provided that the participant obtains the property owner's written consent

prior to making environmental accessibility adaptations; or

- (5) A Supported Living residence as defined in Section 993 (Supported Living Services) of Title 29 DCMR.

- 926.6 EAA services shall not include carpeting, roof repair, central air conditioning, exterior fencing, general repair or maintenance, or those adaptations or improvements to the home that are of general utility; make no direct medical or remedial benefit to the person; and shall not include adaptations that increase the total square footage of the home.
- 926.7 A DDS case manager shall assist all eligible persons to gain access to the Department of Housing and Community Development, Handicap Accessibility Improvement Program.
- 926.8 EAA services shall be authorized by the interdisciplinary team and provided in accordance with the person's IHP or ISP and Plan of Care
- 926.9 Each provider of EAA services shall:
- (a) Be a non-profit organization, home health agency, social service agency, or other business entity;
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for EAA services under the Waiver; and
 - (c) Comply with applicable contractor licensing requirements in the District of Columbia or in the jurisdiction where EAA services are provided.
- 926.10 Before approving EAA services, except for installation of pre-fabricated ramps for wheel-chair accessibility, an evaluation or home inspection shall be required from a licensed contractor or Certified Third Party Construction Inspector that:
- (a) Establishes that the home is structurally sound;
 - (b) Determines whether the home can accommodate the EAA services;
 - (c) Identifies any construction stipulations; and
 - (d) Recommends how the EAA should be constructed.
- 926.11 EAA services shall be provided consistent with any stipulations or recommendations from the licensed contractor or Certified Third Party Construction Inspector.
- 926.12 EAA services shall be provided in accordance with the applicable District, state or local building codes.
- 926.13 Reimbursement for EAA services shall be limited to ten thousand dollars (\$10,000)

per participant over a five-year period and shall be limited to modifications not to exceed two (2) residences in a five-year period. Exceptions to the five-year limitations in this section on EAA services may be approved by DDS on a case by case basis, with adequate supporting documentation outlined in section 926.14, based on demonstrated need, but shall be pre-authorized.

926.14 Evaluation or home inspection shall be reimbursed at a rate not to exceed five hundred dollars (\$500) per inspection, but shall only be payable as a separate service if the home is found structurally unsound or otherwise inappropriate for the EEA modification requested. Reimbursement of all other EAA services shall require:

- (a) Written documentation of the building inspection;
- (b) Development of a construction plan;
- (c) Acquisition of permits;
- (d) Purchase of materials; and
- (e) Labor for construction, renovation, or installation services to be provided.

926.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Certified Third Party Construction Inspector – an inspector certified under the District of Columbia Department of Consumer and Regulatory Affairs Third Party Inspector program.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Licensed Contractor – a contractor licensed to do business in the District of Columbia by the District of Columbia Department of Consumer and Regulatory Affairs, or licensed to do business in the jurisdiction in which the environmental accessibility adaptation services are to be provided.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to pre-authorize Waiver services.

Waiver – Shall mean the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.